

# EXHIBIT A

## AEWRs and Piece Rates in the H-2A Program

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### Summary

Farm employers seeking certification to hire H-2A workers must offer and pay the highest of four wages to H-2A workers and US workers in corresponding employment, the federal or state minimum wage, the Adverse Effect Wage Rate (AEWR), the prevailing wage rate (PWR), or the wage negotiated in a collective bargaining agreement covering the employer's jobs.

The purpose of piece rates is to motivate workers to work fast when it is difficult to monitor how fast they work, as when workers pick fruit in trees. Piece rates are set so that the average hourly earnings of piece rate workers exceed the minimum wage that must be paid by 10 percent to 40 percent, and these higher-than-minimum wage earnings give workers an incentive to work fast without close supervision.

If piece rate wages are replaced by the hourly minimum wage or AEWR, average hourly earnings are likely to fall for several reasons. First, workers no longer have an incentive to work as fast because they earn only the minimum wage or AEWR, not the higher hourly earnings that can be achieved under piece rate wage systems, which reduces the average hourly earnings of workers who previously earned more than the minimum wage or AEWR. In well-designed piece rate wage systems, the average hourly earnings of minimum wage or AEWR-only workers is lower than the average hourly earnings of piece rate workers who are guaranteed the minimum wage or AEWR but whose earnings reflect the number of bins, buckets, or boxes of fruit picked.

Second, US workers who are accustomed to earning more than the minimum wage or AEWR under piece rates would move to employers who continue to offer piece rate jobs, which could increase the supply of workers to such farms and thus depress piece rates and average hourly earnings, or encourage workers accustomed to higher-than-minimum piece rate earnings to find other work. Third, H-2A workers could become a larger share of the workforce, since they can be motivated to work fast by non-wage incentives such as the threat of termination and loss of the legal right to work in the US.

Switching from a piece rate to an hourly wage system is likely to reduce average hourly earnings, spur the exit of US workers who earned more than the minimum wage or AEWR under piece rates, and accelerate the employment of H-2A workers who can be motivated to work fast to keep their jobs with non-wage incentives. Over time, the AEWR may increase at a slower pace because the higher piece rate earnings that bolster

the hourly earnings data in USDA's Farm Labor Survey that is used to establish AEWRs would rise more slowly.

## Introduction

The H-2A program allows farmers who anticipate labor shortages to be certified by DOL to recruit and employ H-2A workers to fill seasonal jobs that generally last up to 10 months. Farmers must offer and pay the highest of four wages to H-2A workers and US workers in corresponding employment, the federal or state minimum wage, the Adverse Effect Wage Rate (AEWR), the prevailing wage rate (PWR), or the wage negotiated in a collective bargaining agreement covering the jobs in question.

The PWR can be an hourly or piece rate. There are very few PWRs in the OFLC wage library in May 2023: <https://www.foreignlaborcert.doleta.gov/aowl.cfm>

Recently, DOL has been certifying job offers in Washington for harvest activities that traditionally paid piece rate wages at only the hourly AEWR. AEWR-only certifications are likely to lead to lower average hourly earnings, fewer US workers accustomed to earning more than the minimum wage or AEWR under piece rate wage systems, and a higher share of H-2A workers among farm workers.

## Wage Systems

Most farm workers are paid via two major wage systems: hourly and piece rates, with some supervisors and animal workers paid monthly salaries.<sup>1</sup> Hourly wages are most common, and are typically the minimum wage or AEWR or \$0.50 or \$1 an hour more. Paying more than the minimum wage allows employers who hire US workers to cream the labor force or attract the best workers.

Work is the exchange of effort for reward: workers give employers control of some of their time in exchange for wages and benefits. The nature of the work and the workers affect supervisory challenges and influence the wage system.

Most farm workers are paid hourly wages, and the major supervisory challenge is to monitor the quantity of work done. This is done in many ways:

- a working supervisor can set the pace of a hoeing or weeding crew as it moves through a field

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<sup>1</sup> H-2A sheepherders in California must be paid an AEWR of \$3,853.63 a month in 2023: <https://api.seasonaljobs.dol.gov/job-order/H-300-23086-879168>

- a moving conveyor belt can set the pace of harvesting for a crew that follows behind to harvest lettuce or melons and place the produce on the belt<sup>2</sup>
- supervisors can announce how much irrigation pipe or other work they expect to be completed in an eight-hour day or other time period

Supervisors may be embedded in or close to hourly work crews to monitor the quantity and the quality of their work.

The purpose of piece rate wages is to motivate workers to work fast when it is difficult to monitor their speed of work, as when workers are picking fruit in trees. Piece rates are set so that average hourly earnings exceed the minimum wage that workers must receive by 10 percent to 40 percent. The prospect of higher-than-minimum wage earnings gives workers an incentive to work fast, and supervision often focuses on the quality of the work done, such as ensuring that there are not too many branches and twigs in bins that would enable workers who are paid by the bin to fill more bins quickly.

Employers set piece rates, such as \$30 to pick a bin of apples. If the minimum wage is \$20 an hour, a worker must earn at least \$160 in eight hours. A worker who picks six bins of apples at \$30 a bin in eight hours earns \$180 or 13 percent more than the minimum wage; a worker who picks seven bins earns \$210 or 31 percent more than the minimum wage. Piece rates provide incentives for all workers to work fast, regardless of their legal status in the US.

### No Piece Rates

If piece rate wages were replaced by the hourly minimum wage or AEWR, average hourly earnings would fall for several reasons:

- workers would no longer have incentives to work fast, since they can only earn the minimum or AEWR wage, reducing average hourly earnings.
- US workers accustomed to and expecting to earn more than the minimum wage or AEWR would move to employers who continue to offer piece rate jobs, which could increase the supply of workers to such farms and depress piece rates, or they could find other work
- H-2A workers who can be motivated to work fast by non-wage incentives such as the threat of termination and loss of the legal right to work in the US would likely become a larger share of the workforce

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<sup>2</sup> Portable technologies such as field conveyor belts are allowing more farm jobs to be converted from piece rate to hourly wage jobs because the employer can control the speed of the machine and thus the pace of work.

Without piece rates, increases in the AEWR may slow because the sample on which the AEWR is based would include fewer workers who have higher-than-AEWR piece rate earnings. USDA's Farm Labor Survey (FLS) contacts about 17,000 US farm employers twice a year to obtain the earnings data that is used to establish AEWRs. Less than half respond, providing information on the total earnings and hours worked of the various types of farm workers they employed during the week that includes the 12<sup>th</sup> of the month of January, April, July, and October. Employer response rates are less than 40 percent in California, the Pacific Northwest and the Mountain III states of AZ and NM, which means that the AEWR for 2023 in OR and WA was based on responses from about 240 farm employers in the two states.<sup>3</sup>

### **Labor Markets**

Labor markets perform 3-R functions to overcome information asymmetries: recruitment, renumeration, and retention. Recruitment deals with how employers find the best workers to fill jobs and workers find the best jobs that match their capabilities and preferences. Remuneration is the process of converting worker effort into reward in the form of wages, benefits, recognition, and other factors valued by employees as they perform work valuable to their employers. Retention is identifying good employees and encouraging them to remain in the job or return next season.

Recruitment is the first challenge. Employers seeking workers know the requirements of the job, but not the productivity of potential employees. Workers know their abilities, but may not understand all of the requirements of the job. Nonfarm employers screen potential employees by establishing minimum requirements for applicants, such as having a high school diploma or college degree, and workers signal their abilities to potential employers by earning credentials such as diplomas or degrees.

Screening and signaling in agriculture are often replaced by network hiring. This involves crew supervisors and current workers bringing friends and relatives capable of performing the work into the crew and orienting and training new crew members.

**Remuneration** is the process of rewarding employees for their efforts to produce goods and services valuable to the employer. There are many wage systems, but most US workers are paid hourly wages or monthly salaries that compensate them for the time that they worked. The major management challenge in time-based wage systems is to monitor the quantity of work done. There are many techniques for establishing

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<sup>3</sup> Some 738 OR-WA farm employers were asked to provide data in 2022, and 32.5 percent responded, the lowest response rate in any FLS region.  
<https://migration.ucdavis.edu/rmn/blog/post/?id=2838>

minimum work quantities, from quotas to machines on assembly lines that set the pace of work. Most factory jobs pay hourly wages and rely on machines to set the pace of work, with workers expected to keep up with the pace established by the employer.<sup>4</sup>

There are jobs such as traveling salesperson where worker productivity is hard to monitor, and these jobs often offer guaranteed minimum salaries and commissions based on the quantity of sales that are set so that average commission earnings exceed the guaranteed salary. Some commission wage systems include elements of a pay tournament, offering bonuses to the best-performers that elicit extraordinary efforts from all sales people, as when the best salesperson gets a bonus that is twice the bonus of the second-place finisher.<sup>5</sup>

There are many uncertainties in farm work that stem from weather, market prices, and other factors. Before minimum wage and child labor laws applied to agriculture, many farmers offered piece rate wages to anyone who would work, making the cost of getting apples picked a predictable \$5 a bin regardless of who picked them. Worker earnings varied depending on their own abilities, orchard conditions, and yields, so that adults picking in well-maintained trees with high yields earned far more per hour at the piece rate than children working in poorly maintained orchards with low yields.

Minimum wages establish a guarantee for all workers. Employers respond by not hiring workers who cannot achieve at least the minimum level of output to earn the minimum wage, such as children. If some employers offer only minimum wages while others offer minimum wages and piece rates, workers sort themselves between employers according to their productivity. Borjas's Labor Economics textbook summarizes the research: "piece-rate workers earn more than time-rate workers both because of differences in ability and because piece-rate workers work harder." (2018, p481)<sup>6</sup>

## Conclusions

If DOL certifies job offers that promise only the AEWR rather than the piece rate traditionally offered to workers who pick tree fruit, average hourly earnings are likely to fall, US workers accustomed to picking fast enough to earn more than the AEWR are

<sup>4</sup> Many production processes require team efforts, so offering one worker on an assembly line a piece rate wage would not speed up production if the other workers could not keep up. Some employers pay hourly wages and offer group bonuses to teams that surpass a target level of output each day or week.

<sup>5</sup> Many sports tournaments offer first-place prizes that are double or more the prize for a second-place finish, encouraging all participants to try their best to win.

<sup>6</sup> <https://www.mheducation.com/highered/product/labor-economics-borjas/M9781260004724.html>

likely to crowd into remaining piece rate jobs or exit, and the share of H-2A workers who can be motivated by factors other than higher-than-AEWR earnings is likely to rise. The AEWR is likely to increase more slowly over time due to fewer higher-than-AEWR earnings being reported by farm employers to the Farm Labor Survey that is used to establish AEWRs.